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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,008	06/27/2003	Brett Error	OMN8054	8329
48384 7590 01/19/2010 RAUBVOGEL LAW OFFICE 820 LAKEVIEW WAY REDWOOD CITY, CA 94062				
EXAMINER PADMANABHAN, KAVITA				
ART UNIT 2161		PAPER NUMBER		
NOTIFICATION DATE 01/19/2010		DELIVERY MODE ELECTRONIC		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRETT ERROR and JOHN PESTANA

Appeal 2009-001735
Application 10/609,008¹
Technology Center 2100

Decided: January 14, 2010

Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and
JAY P. LUCAS, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application filed June 27, 2003. The Appellants claim the benefit under 35 U.S.C. § 119 of provisional application 60/393,002, filed June 28, 2002. The real party in interest is Omniture, Inc.

STATEMENT OF THE CASE

The Appellants appeal from a final rejection of claims 12-21, 33-42, and 54-63 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b). Claims 1-11, 22-32, and 43-53 are cancelled.

We reverse.

The Appellants' invention relates to a method for collecting, filtering, and analyzing site path data for website users to assist website administrators in understanding and analyzing how data is presented to users. (*See Spec.*

¶¶ [0010] and [0012].) In the words of the Appellants:

The website administrator can identify a series of nodes, or web pages, in a site as checkpoints, and can configure the system of the invention to provide information as to a particular visitation path through the checkpoints. The system then presents usage statistics for the specified visitation path. . . . [T]he system is able to recognize a visitation path among checkpoints, regardless of whether the user visits other nodes in the course of the checkpoint traversal. Thus, even if a user takes "side trips" through other web pages that are not designated as checkpoints, the present invention is able to provide meaningful site path analysis with respect to those nodes that are designated as checkpoints.

(*Spec.* ¶ [0010]).

Claim 12 is exemplary:

12. A computer-implemented method for capturing and presenting node sequence data, comprising:

receiving input designating a target path comprising a sequence of nodes, the target path further comprising at least one wild card;

retrieving, from a stored log, a plurality of records comprising node sequence data;

filtering the retrieved records to identify records corresponding to node sequences that match the target path; and

outputting a report based on the identified records.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kasriel	US 2003/0128231 A1	Jul. 10, 2003
		(filed on Apr. 22, 2002)

REJECTION

The Examiner rejects the claims as follows:

R1: Claims 12-21, 33-42, and 54-63 stand rejected under 35 U.S.C. § 102(e) for being anticipated by Kasriel.

The Appellants contend that the claimed subject matter is not anticipated by Kasriel because Kasriel fails to teach the claimed “wild card”

(App. Br. 6, middle). The Examiner contends that each of the claims is properly rejected (Ans. 8, bottom).

The rejection will be reviewed in the order argued by the Appellants. The claims are grouped as per the Appellants' Brief. Only those arguments actually made by the Appellants have been considered in this opinion. Arguments that the Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

The issue is whether the Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(e). The issue specifically turns on whether Kasriel teaches the claimed "wild card."

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

Disclosure

1. The Appellants have invented a method, system, and program product for analyzing and filtering website visitation paths. (*See* claims 12, 33, and 54; Spec. ¶¶ [0010] and [0012].) A target path is a path that a website administrator identifies as a path of interest (Spec. ¶ [0044]). The method involves specifying a target path using a "wild card." (*See* claim 1.) Wild cards match any webpage (*i.e.*, a "node") along the target path (Spec. ¶ [0048]).

Kasriel

2. The Kasriel reference teaches a method of tracking website usage. (*See* ¶ [0019].) The method includes tracking usage from an entry point of a website (*e.g.*, webpage A, B, or C). (*See* ¶ [0035].)

PRINCIPLES OF LAW

The Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim" *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

ANALYSIS

The Appellants present two arguments for our review.

*Arguments with respect to the rejection
of claims 12 to 21, 33 to 42, and 54 to 63
under 35 U.S.C. § 102(e) [R1]*

First, the Appellants argue:

[T]he wild cards claimed herein provide a much greater degree of flexibility in specifying a particular path to be matched, and in designating

points along the path where tangential pages may or may not appear while still resulting in a match. Nowhere in Kasriel is any such matching technique taught or suggested, nor is there any hint of any other technique that would provide as robust a pattern-matching capability.

(App. Br. 6, middle) (Emphasis added).

In reply, the Examiner states in the Answer that Kasriel teaches the concept of a wild card where the reference describes an example of tracking website usage (Ans. 6, bottom). The Examiner appears to equate a wild card with an exemplary website (*i.e.*, “yahoo.com”) having multiple pages that may be visited from an entry point. (See Ans. 7, middle to bottom; Kasriel, ¶ [0035].)

We select claim 12 as exemplary. We carefully reviewed the Examiner’s Answer, the cited portions of Kasriel, and indeed the entire reference. We find that the Examiner has pointed to nothing in particular in Kasriel that a person of ordinary skill in the art would have recognized as the claimed “wild card” at the time the invention was made. (See Ans. 6, bottom to 8, middle.)

We find that the Appellants’ claimed invention analyzes and filters website visitation paths (FF#1). A target path is a path that a website administrator identifies as a path of interest (*id.*). The method involves specifying a target path using a “wild card” (*id.*). Wild cards match any page (*i.e.*, a “node”) along the target path (*id.*). In contrast, the Kasriel reference merely teaches a method of tracking website usage, such that the method tracks usage from an entry point of a website (*e.g.*, webpage A, B, or C) (FF#2). Upon reviewing Kasriel and the Examiner’s “Response to

Arguments,” we decline to find that Kasriel has a particular teaching for the Appellants’ claimed “wild card.” Accordingly, we find error in the Examiner’s analysis of claim 12.

Claims 13-21, 33-42, and 54-63 stand with exemplary claim 12.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner erred in rejecting claims 12-21, 33-42, and 54-63.

DECISION

The Examiner’s rejection of claims 12-21, 33-42, and 54-63 is reversed.

REVERSED

peb

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